



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0117; FRL-9931-11-Region 6]

**Determination of Attainment; Texas; Houston-Galveston-Brazoria 1997 Ozone
Nonattainment Area; Determination of Attainment of the 1997 Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Houston-Galveston-Brazoria (HGB) 8-hour ozone nonattainment area is currently attaining the 1997 ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2012–2014 monitoring period and continues to monitor attainment of the NAAQS based on preliminary 2015 data. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration, a reasonable further progress (RFP) plan, contingency measures, and other State Implementation Plan (SIP) documents related to attainment of the 1997 ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS. This proposed action is consistent with EPA’s interpretation of certain requirements of part D of title I of the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0117, by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions.
- E-mail: Ms. Wendy Jacques at *jacques.wendy@epa.gov*.
- Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L),

Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket No. EPA-R06-OAR-2015-0117. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. The *www.regulations.gov* web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional information on submitting comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Jacques, (214) 665-7395, jacques.wendy@epa.gov. To inspect the hard copy materials, please contact Ms. Jacques or Mr. Bill Deese at (214) 665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

I. Background

Section 109 of the Act requires the EPA to establish a NAAQS for pollutants that “may reasonably be anticipated to endanger public health and welfare” and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health

with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. The EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

Ozone is a gas composed of three oxygen atoms. Ground-level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack, but is created by a chemical reaction between volatile organic compounds (VOCs) and oxides of nitrogen (NOx) in the presence of sunlight.¹ Ozone is known primarily as a summertime air pollutant. Motor vehicle exhaust and industrial emissions, gasoline vapors, chemical solvents and natural sources emit NOx and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors hundreds of miles from their sources.²

On July 18, 1997, the EPA promulgated an 8-hour ozone NAAQS of 0.08 parts per million (ppm), known as the 1997 ozone standard. See 62 FR 38856 and 40 CFR 50.10. Under the EPA regulations at 40 CFR part 50, Appendix I, the 1997 ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentration is less than or equal to 0.08 ppm.

On April 30, 2004, the EPA designated and classified the 8-county HGB area (consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties)

¹ VOC and NOx are often referred to as "precursors" to ozone formation.

² For additional information on ozone, please visit www.epa.gov/groundlevelozone.

as a Moderate nonattainment area under the 1997 ozone standard with an attainment date of no later than June 15, 2010 (see 69 FR 23858 and 69 FR 23951). On June 15, 2007, we received a request from the Governor of Texas seeking voluntary reclassification of the HGB area from a Moderate nonattainment area to a Severe nonattainment area under the 1997 ozone standard, which we approved on October 1, 2008 (73 FR 56983).³ Subsequently, the State submitted the Reasonable Further Progress (RFP) and Attainment Demonstration (AD) SIPs for the HGB Severe area under the 1997 ozone standard. These RFP and AD SIPs were approved on January 2, 2014 (see 79 FR 51 and 79 FR 57, respectively).

On March 27, 2008 (73 FR 16436), the EPA promulgated a revised 8-hour ozone NAAQS of 0.075 ppm (the 2008 ozone standard). On April 30, 2012, the EPA promulgated designations under the 2008 ozone standard (77 FR 30088) and in that action the EPA designated the 8-county HGB area as a Marginal ozone nonattainment area.⁴ The rule to implement the 2008 ozone standard was finalized on March 6, 2014 (see 80 FR 12264) and in that action the EPA revised the Clean Data Policy⁵ to include the 2008 ozone NAAQS and any prior ozone NAAQS. That is, upon a determination by the EPA that an area designated nonattainment for the 2008 ozone NAAQS, or for any prior ozone NAAQS, has attained the relevant standard, the requirements for such area to submit attainment demonstrations and associated RFP plans, contingency measures for failure to attain or make reasonable progress and other planning SIPs required under section 182 of the Act related to attainment-of the 2008 ozone NAAQS, or for

³ The attainment date for the HGB Severe nonattainment area is as expeditiously as practicable, but not later than June 15, 2019.

⁴ The EPA's actions herein do not address the HGB nonattainment area for the 2008 ozone standard.

⁵ The EPA initially issued the Clean Data Policy in 1995, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. For purposes of the 1997 ozone standard, we codified that policy at 40 CFR 51.918. This codified policy was upheld by the DC Circuit in *NRDC v. EPA*, 571 F.3d 1245 (DC 2009). The policy memo is in the docket for this rulemaking.

any prior NAAQS for which the determination has been made, shall be suspended until such time as: 1) the area is redesignated to attainment for that NAAQS or a redesignation substitute is approved as appropriate, at which time the requirements no longer apply; or 2) the EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans. See 80 FR 12264, 12317 and 40 CFR 51.1118.

If the EPA's determination that the HGB area is currently attaining the 1997 ozone standard is finalized, 40 CFR 51.1118 provides that the requirements for the TCEQ to submit certain RFP plans, attainment demonstrations, contingency measures and any other attainment planning requirements of the CAA related to attainment of that standard in the HGB area shall be suspended for as long as the area continues to attain the standard. This action is known as a Clean Data Determination or CDD. However, a CDD does not constitute a redesignation to attainment under section 107(d)(3)(E) of the Act, and if the EPA determines that the area subsequently violates the standard, that suspension of the requirement to submit the attainment planning SIP provisions is lifted, and those requirements are once again due. Even though the EPA has finalized revocation of the 1997 eight-hour ozone NAAQS, under 40 CFR 51.1118, an area remains subject to the obligations for a revoked NAAQS until either (i) the area is redesignated to attainment for the 2008 ozone NAAQS; or (ii) the EPA approves a demonstration for the area in a redesignation substitute procedure for a revoked NAAQS per the provisions of §51.1105(b). Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the demonstration must show that the area has attained that revoked NAAQS due to permanent and enforceable emission reductions and that the area will maintain that revoked NAAQS for 10 years from the date of the EPA's approval of this showing.

We also note that the CDD does not constitute a Determination of Attainment by an Area's Attainment Date under sections 179(c) and 181(b)(2) of the Act.

II. The EPA's Evaluation of the HGB Data

For ozone, an area is considered to be attaining the 1997 ozone NAAQS if there are no violations, as determined in accordance with 40 CFR part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. Under the EPA regulations at 40 CFR part 50, the 1997 ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 parts per million (ppm), (i.e., 0.084 ppm, when rounding, based on the truncating conventions in 40 CFR part 50, Appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitor within the area, then the area is meeting the NAAQS. Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than or equal to 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR Part 50. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment. For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); $\text{ppb} = \text{ppm} \times 1,000$. Thus, 0.084 ppm equals 84 ppb.

The EPA reviewed the HGB area ozone monitoring data from ambient ozone monitoring stations for 2012-2014 and through July 2015. The 2012-2014 data for all the ozone monitors in

the HGB area have been quality assured and certified by the EPA. The design value for 2012-2014 is 80 ppb. At the time of this writing, the preliminary ozone data for 2015 are posted on the Texas Commission on Environmental Quality (TCEQ) website and in AQS.⁶ The data for 2012-2014, and preliminary data for 2015, show that the HGB area is attaining the 1997 ozone NAAQS.

Table 1 shows the fourth-highest daily maximum 8-hour average ozone concentrations for the HGB nonattainment area monitors for the years 2012-2014. (To find the overall design value for the area for a given year, simply find the highest design value from any of the 20 monitors for that year.)

Table 1: The HGB Area Fourth High 8-hour Ozone Average Concentrations and Design Values (ppm) for 2012-2014⁷

Site Name and AQS Number	4 th Highest Daily Max			Design Value (2012-2014)
	2012	2013	2014	
Seabrook Friendship Park 482011050	0.086	0.067	0.065	0.072
Houston Westhollow 482010066	0.081	0.077	0.070	0.076
Houston Deer Park #2 482011039	0.085	0.069	0.063	0.072
Houston North Wayside 482010046	0.075	0.070	0.062	0.069
Houston Monroe 482010062	0.085	0.074	0.065	0.074
Conroe Relocated 483390078	0.082	0.075	0.072	0.076
Houston East 482011034	0.083	0.069	0.066	0.072
Channelview	0.077	0.061	0.064	0.067

⁶ See http://www.tceq.texas.gov/agency/data/ozone_data.html. Preliminary data for the first quarter of 2015 are posted in AQS and are provided in the docket for this rulemaking.

⁷ These ozone monitors have remained in the same location for the duration of the monitoring period from 2012 to 2014. The TCEQ website includes monitoring data for the Texas Avenue site, but Table 1 here does not. Data from the Texas Avenue site is excluded because the site does not meet siting criteria required by 40 CFR Part 58 Appendix E. The TCEQ has requested NAAQS exclusion for the pollutants monitored at this site since 2002. The TCEQ ozone monitors and data are posted at https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl.

482010026				
Lake Jackson 480391016	0.071	0.067	0.061	0.066
Baytown Garth 482011017	0.071	0.061	0.067	0.066
Park Place 482010416	0.077	0.079	0.066	0.074
Houston Croquet 482010051	0.079	0.079	0.067	0.075
Houston Aldine 482010024	0.075	0.074	0.068	0.072
Houston Bayland Park 482010055	0.077	0.081	0.067	0.075
Clinton 482011035	0.081	0.067	0.058	0.068
Northwest Harris County 482010029	0.082	0.080	0.063	0.075
Manvel Croix Park 480391004	0.087	0.084	0.071	0.080
Lang 482010047	0.081	0.079	0.064	0.074
Galveston 99 th Street 481671034	0.081	0.064	0.071	0.072
Lynchburg Ferry 482011015	0.075	0.064	0.059	0.066

As shown in Table 1, the 8-hour ozone design value for 2012-2014, which is based on a three-year average of the fourth-highest daily maximum average ozone concentration at the monitor recording the highest concentrations, is 80 ppb, which meets the 1997 ozone NAAQS. Data for 2015 not yet certified also indicate that the area continues to attain the 1997 ozone NAAQS. In addition, ozone data for 2015 that are available in the EPA AQS database show this area continues to attain the 1997 ozone NAAQS. The AQS data reports for the HGB area for the three years 2012 through 2014 and the first quarter of 2015 are included in the docket for this rulemaking.

III. Proposed Action

In accordance with 40 CFR 51.1118, the EPA is proposing to determine that the HGB 8-hour ozone nonattainment area is currently attaining the 1997 ozone NAAQS. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2012-2014 monitoring period and continues to monitor attainment of the NAAQS based on preliminary 2015 data. Thus the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, RFP plans, contingency measures for failure to attain or make reasonable progress and other planning SIPs related to attainment of the 1997 ozone NAAQS shall be suspended until such time as: 1) the area is redesignated to attainment for the 1997 ozone NAAQS or a redesignation substitute is approved as appropriate, at which time the requirements no longer apply; or 2) the EPA determines that the area has violated the 1997 ozone NAAQS, at which time the area is again required to submit such plans. This proposal is consistent with our interpretation of certain requirements of part D of title I of the Act.

IV. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain Federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it merely makes a determination based on air quality data.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 3, 2015.

Ron Curry,

Regional Administrator, Region 6.

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